



UNION EUROPÉENNE DES TRANSPORTEURS ROUTIERS

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Committee on Employment and Social Affairs (EMPL)

European Parliament

BRUSSELS - A1G-3, (A1G-2) - Tue 01 December 2009

**The organisation of the working time of persons performing mobile
road transport activities (exchange of views)**

UETR STATEMENT

With the present statement UETR intends to give its contribution in the debate and provide its view on the subject towards the elaboration by the Committee on Employment and Social Affairs of the European Parliament of the report on the Commission's proposal amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.

UETR is the umbrella organization representing more than 185.000 European freight transport SMEs from Western and Eastern EU Member States federations, with a total capacity of more than 415.000 commercial vehicles ¹.

In the light of recent discussions in the European Parliament on the working time directive 2002/15, UETR strongly calls for an exclusion of self employed drivers for the following reasons:

1) Exclusion of self-employed drivers is not threatening the road transport safety

Overall efficiency improvement is a goal that UETR fully supports. The improvement of road safety is a constant worry for transport companies.

¹ Within the Union, 95% of the road haulage companies are micro-enterprises with less than 10 employees (small firms or one-man operations).



UETR underlines that road safety is already fairly covered by Regulation 2006/561 on resting times and driving periods in exactly the same way for employed and self-employed drivers.

Regulation (EEC) 3821/85, as amended in 2006, requires that digital tachographs are fitted into goods vehicles and buses that come into scope of the Drivers' Hours rules and which are first brought into service after 1st May 2006. However, for some light vehicles (M1 and N1 class), it was technically not possible to install the equipment in such a way that it meets all of its functional and security requirements.

UETR highlights that a new regulation, entered into force on this year ² now corrects this technical shortcoming by allowing the use of a dedicated, type-approved adaptor for these vehicles. So now smaller vehicles of less than 3.5 tons are covered.

Moreover, a review process of the Regulation is currently ongoing at European level (European Commission). Finally, the new Directive detecting and preventing abuses of the tachograph system ³ helps to find a better balance in terms of minimum daily and weekly rest periods to which all drivers are entitled, strengthening quality and quantity of enforcement activity for drivers.

The sector is already the safest in Europe regarding the exposition to road transport accidents. According to the last Annual Statistical Report ⁴, of the European Road Safety Observatory ⁵ in the European Union only 2.8 % of fatalities involve light commercial vehicles (which are mostly used by self employed drivers). For lorries over 3.5 tonnes the percentage is 0.9 % while for cars or taxis a 51,2% is recorded.

For such figures the date of query is 2008: so such extremely low percentages have been registered for a period when the directive did not yet apply to self-employed drivers ⁶.

However, even with this very low percentage, accident involvement does not mean "cause" of that accident. On-site research to determine causes of accidents should be promoted. The identification of the real causes is the key to acquire the necessary data and useful knowledge to determine new policy in order to further improve road safety.

² The Commission Regulation (EC) No 68/2009 of 23 January 2009 adapting for the ninth time to technical progress Council Regulation (EEC) No 3821/85 on recording equipment in road transport

³ Commission Directive 2009/4/EC of 23 January 2009 counter measures to prevent and detect manipulation of records of tachographs, amending Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC

⁴ Annual Statistical Report 2007, Based on data from CARE / EC, SafetyNet- Building the European Road Safety Observatory- Workpackage 1 – Task 3 Deliverable No: D 1.16 http://ec.europa.eu/transport/road_safety/specialist/statistics/care_reports_graphics/index_en.htm

⁵ www.erso.eu

⁶ The directive applies to self employed drivers from 23 March 2009



Information on risks and accidents at work regarding self-employed workers is still rather limited and is often based on small samples. In general, studies on this topic were not developed in a homogeneous way in all of EU member countries.

It is not just a matter of regulation: special policies to educate both drivers and management about the problem are needed. EU road safety policy covers behaviour, vehicle and infrastructure issues, the three components which make up the traffic system. Driver fatigue countermeasures must be directed not only to transport companies and drivers but also to roads or vehicles and imply the co-responsibility of the principal of the transport order.⁷

Drivers' health is of course another issue of concern for UETR.

According to the Fourth European Working Conditions Survey (2007)⁸ the highest exposures of self employed drivers to long working hours and physical risks are reported in the agriculture, fishery and construction sectors (40 % for agriculture and fishing); only 5 % is reported in transport- and this percentage relates also to communications (transport and communications)- so we can easily figure out that for transport alones such percentage is even lower)⁹.

Note that here again the date of query (2007) precedes the date of the application of the directive to self-employed drivers (23 March 2009).

Fatigue results not just from work-related factors, but from their combination with biological and lifestyle factors. All experts agree on the fact that more scientific evidence is needed concerning the exact quantitative relationship between fatigue and risk.

2) Inclusion of self-employed will cause serious damages to competitiveness

⁷ Safe road infrastructures contribute substantially to reducing accidents. Roads may be equipped with edgelines or centrelines that provide audio-tactile feedback when crossed over. The EU policy is more and more proposing vehicles equipped with devices that detect fatigue-related decrements in driver performance- so it will be cost for enterprises.

E. g. see Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management.

⁸ "Self-employed workers: industrial relations and working conditions", Eurofound - the European Foundation for the Improvement of Living and Working Conditions- <http://www.eurofound.europa.eu/>

⁹ By sector of activity, EU27 (%). By occupation, in 2005, the most exposed groups were craft and related trades workers, plant and machine operators and skilled agricultural and fishery workers.

A fundamental aspect of the nature of the economic activity of self employed drivers (and self-employed workers in general) is their exposure to financial risk, by having to bear the cost of faulty.

From this point of view self-employed workers are more vulnerable than wage workers. We should keep in mind that the two terms "self employed driver" and "entrepreneur" can be used interchangeably. A self-employed driver IS an entrepreneur.

A high degree of risk tolerance is one of the fundamental characteristics of their activity.

If we apply the directive, a young man or woman will know that if he or she decides to enter self employment, he or she will not be able to have control over the job they do-when they do it.

The provided definitions ¹⁰ indicate clearly that the self-employed driver has the freedom to organise his/her working place and time and the relevant working activities.

Dumping practices

The application of the directive to EU self employed drivers will introduce limitations in their work activity that non- EU do not have, being allowed to work more hours.

Moreover, these provisions would discriminate self-employed *drivers* against self-employed *workers of other sectors*- excluded from the working time directive. Unfair competition- but this time among EU self employed workers. It would be a dangerous precedent in the limitation of the rights of self employed workers.

UETR has always remarked that the real social dumping problem in road transport sector is that current transport rates are much lower than the actual cost of the service, which is in other words the minimum sufficient tariff allowing the self employed driver to cover all the transportation costs plus a minimum of income making the business go on.

The unfair competition exists between EU and non-EU self employed drivers, with businesses from non-EU countries asking a price much lower that the minimum possible average price in the EU territory.

Road transport sector, like all other sectors, is facing a deep financial and economic crisis.

Some effects of the impact of the crisis on road transport:

- Falling Demand;
- Haulage tariffs in decline;
- From 2008 thousands of companies closed

¹⁰ Art 1 of the EC proposal (Dir 2002/15/EC Art 3)



This impact has of course consequences on the real economy:

- Commercial vehicles registrations down 38.7% in January 2009- up to around 70 % in Eastern Europe ¹¹;
- A decrease in circulation of goods;
- In the last quarter of 2008 GDP fell by -1.6 % ¹²;
- Increase in unemployment

We have also a structural situation of the transport market with:

- Low transportation costs / Haulage tariffs
- Weak contractual power
- Structural weakness
- Lack of access to credit
- Taxes and charges
- late payments ¹³
- high fuel costs

Because of all these factors it is easily understandable how the application of the directive can impair the economic activity of self employed drivers and the general competitiveness of transport sector.

“False” self-employed drivers

The problem of “false” employed exists. It is true that the most problematic situations are sometimes related to the connections between self-employment and the informal economy and to the elusion of regulations through bogus self-employment.

UETR is aware of that and stay on the front line.

UETR refutes the assertion that the only way to guarantee social protection for false self employed is to apply the directive to self employed drivers tout court.

Many criteria to distinguish between different situations by looking at a set of dimensions have been used at national level before the European Commission's proposal to reform and adjust existing legislation ¹⁴.

¹¹ Source: ACEA and IVECO

¹² Source: Eurostat

¹³ A major drain on the European economy, it is the cause of 1 in 4 bankruptcies, wiping out an estimated 450 000 jobs every year. Small businesses are most vulnerable because they depend on timely receipts to maintain cash flows, especially now banks are reluctant to issue loans. Payments should be made within 30 days but national averages vary widely, from 65 up to 120 days (4 months).

Law requirements, in every country and at EU level, will never be sufficient alone. Case law is the necessary complementary instrument to distinguish, it has always been (and will be). Labour law doctrine and case law has always based the distinction on circumstances, indicators ¹⁵.

EU member states law has always identified in the flexibility of the working time as the core element of the self employed workers activity.

The role of the judge to assess the nature of employment is, in this case, fundamental, more than for other economic activities and sectors.

Actually, it is true that the problem of false self employed is a matter already covered by Member States.

If we look at the experience of many EU member countries, we see that strategies against the phenomenon do not focus on working time regulation.

In these circumstances, stricter enforcement of existing rules and the development of new tools to face irregular situations, in particular with the active involvement of the professional organization, may be part of an adequate response.

Further and more focused research is much needed to develop adequate policies to support the improvement of working and employment conditions of self-employed workers and target the most adequate piece of legislation.

3) Monitoring / enforcing the application of the directive to self employed is not feasible.

A clear cut division between working time and private time of self employed is impossible. Working time for self-employed drivers tends to be much more uncertain and less structured than that of employees, because of the nature itself of their economic activity.

Applying the directive could also lead to higher level of stress, as the entrepreneur will try to achieve more in less time in order to maintain his/her profitability.

For self-employed there is no clear distinction of task, which means that the self employed driver performs the same tasks as some of the existing employees, or tasks which, in the case of road transport company with employees, are carried out by employees.

A self-employed driver does not have an administrative structure behind him, he or she must do everything (from driving to administration, from mobile operations to contacts with clients, etc...). Adding another administrative task – recording the working time and keeping a register, monitoring- is practically almost impossible to do, would result in a

¹⁴ E, g, investment of own capital; autonomy in the labour market; responsibility for and control of own work; presence of employees.

¹⁵ E. G. the place of the service; the property of the instruments;

limitation of the business activity and would not be coherent with the EU policy on the reduction of administrative burdens.

UETR stresses the importance of efforts to reduce administrative burden for businesses. These efforts must be extended and intensified both on the European and the national level, in order to reach the target of reducing red tape in a sustainable manner to push economic growth.

The application to self employed drivers create also a state of high uncertainty about how to proceed from the point of view of the enforcement by public authorities.

Moreover an application of working time restriction to self employed drivers/entrepreneurs would be a very important and delicate precedent to all kinds of entrepreneurship.

Conclusion

UETR is for a concrete and realistic approach.

UETR supports the goals of drivers' health, road safety and European integration. However, companies' experience on the field and recent developments in the light of the current economic and financial crisis should be taken into account by the European Parliament. Including the self-employed workers into the directive will have serious negative economic consequences for the sector and for the EU real economy.

A sound European policy should reflect the effectiveness of the role played by self-employed drivers AND entrepreneurs avoiding administrative and economic limitations, to guarantee an improved competitiveness at an equitable cost.

